

FILED 09 SEP 22 13:25 USDC-ORM  
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

BARBARA E. CHAPMAN,	)	Civil No. 08-409-CL
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	

**PANNER, Judge.**

On July 30, 2009, Magistrate Judge Clarke filed his Report and Recommendation ("R&R"), which recommends reversing the decision of the Commissioner and remanding the matter for a determination of the onset date of disability and computation of an award of benefits. The Commissioner timely objected to that Recommendation. The matter is now before me for *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

The R&R cites Gomez v. Chater, 74 F.3d 967 (9th Cir. 1996). The Commissioner contends "Gomez is no longer good law" because the "interdisciplinary team" language that Gomez relied upon was later removed from 20 C.F.R. § 416.913.

Resolution of the pending controversy does not require this court to determine the continued viability of Gomez. The

circumstances of the instant case are sufficiently distinguishable from Gomez that the rule articulated by that panel is inapposite here. Martin's opinions are more properly evaluated under the standards articulated in Social Security Ruling 06-03p, 2006 WL 2329939 (Aug. 9, 2006).

Although the R&R mentions Gomez and the "clear and convincing standard," the Magistrate Judge also evaluated Martin's opinion under an alternative standard not inconsistent with SSR 06-03p. See, e.g., R&R p. 16 ("Even if Martin's opinion is not entitled to the weight of an acceptable medical source . . . [t]he ALJ did not articulate any valid reason to disregard Martin's opinion"); id. p. 15 ("The ALJ's assertion that he discounted Martin's opinion because it was based on Chapman's subjective reports is not clear and convincing and not supported by substantial evidence.")

I am satisfied the Magistrate Judge would have reached the same conclusion without applying Gomez, and that the recommended result is correct.

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**Conclusion**

Magistrate Judge Clarke's Report and Recommendation (docket # 43) are adopted as clarified above. The decision of the Commissioner is reversed and the matter remanded to permit the Commissioner to determine the onset date of disability and to calculate and to award benefits to Plaintiff.

IT IS SO ORDERED.

DATED this 22 day of September, 2009.

A handwritten signature in black ink, reading "Owen M. Panner", is written over a horizontal line.

Owen M. Panner  
United States District Judge